

**UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

In re:  KIEBLER RECREATION, LLC  Debtor.	Case No. 10 - 15099  Chapter 11  Judge Randolph Baxter
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**RESPONSE OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS TO  
SECOND MOTION OF THE DEBTOR FOR AN ORDER EXTENDING THE PERIODS  
OF TIME WITHIN WHICH ONLY THE DEBTOR IS PERMITTED TO FILE A PLAN  
OF REORGANIZATION AND SOLICIT ACCEPTANCES THEREOF**

The Official Committee of Unsecured Creditors (the “Committee”), by and through its undersigned counsel, hereby responds to the *Second Motion of the Debtor for an Order Extending the Periods of Time Within Which Only the Debtor is Permitted to File a Plan of Reorganization and Solicit Acceptances Thereof* [Docket No. 265] (the “Motion”), respectfully states as follows:

**PRELIMINARY STATEMENT**

1. Debtor seeks an extension of 120 days of exclusivity. To permit Debtor and the Committee the time to lay the ground work for preparing an appropriate Chapter 11 plan, the Committee would consent to an extension of exclusivity for a shorter period of time, initially through and including November 30, 2010, as Debtor and Committee continue to work on a Chapter 11 plan.

## LEGAL STANDARD

2. The Committee acknowledges that Section 1121(d) of the Bankruptcy Code does not define “cause” for an extension of exclusivity and instead contemplates “a fact-based inquiry”. (Motion, ¶ 13). Courts typically consider a number of factors including, without limitation: (i) the size and complexity of the case, (ii) the debtor’s progress in the bankruptcy proceedings; (iii) the debtor’s motivation for seeking an extension of exclusivity; (iv) the potential for harm to creditors; and (v) whether plan negotiations have reached an impasse. *See Elder-Beerman*, 1997 U.S. Dist. LEXIS 23785, at \*14, \*26 (S.D. Ohio 1997). Applying these factors in this case, the Motion simply falls short of justifying a 120-day extension at this time.

### Size and Complexity

3. While Debtor’s chapter 11 case has certain elements of size, and certain complexities, neither compel an extension of exclusivity.

### Debtor’s Progress in Chapter 11

4. Debtor’s progress appears to have been adversely affected by the “divergent view of the Debtor and Huntington Bank on the vital issue of the value of the Debtor’s resort real property.” (Motion, ¶ 16).

5. A brief extension of exclusivity is justified.

### Debtor’s Motivation for Seeking an Extension of Exclusivity

6. Debtor’s motivation does not appear to impact this request.

Potential for Harm to Creditors

7. The Debtor's recent discussions with and commitment to the Committee appear designed to protect unsecured creditors, supporting the Debtor's statement that "the extension is not being sought for the purpose of pressuring creditors." (Motion, ¶ 18).

Plan Negotiations – Not at an Impasse

8. There is not an 'impasse' in plan negotiations.

9. The Committee reserves the right to amend, modify or supplement this Response.

**CONCLUSION**

WHEREFORE, the Committee respectfully requests the Court (i) limit any present extension of the Debtor's plan exclusivity to November 30, 2010, without prejudice to further extension; (ii) reserving all rights of Debtor and the Committee, adjourned further hearings on the Motion and the Response and Limited Objection to November 30, 2010; and (iii) grant the Committee such other and further relief as is just and equitable.

November 1, 2010

/s/ Daniel A. DeMarco

Daniel A. DeMarco (0038920)  
Christopher B. Wick (0073126)  
Hahn Loeser & Parks LLP  
200 Public Square, Suite 2800  
Cleveland, Ohio 44114  
Telephone: (216) 621-0150  
Facsimile: (216) 241-2824  
E-Mail: dademarco@hahnlaw.com  
cwick@hahnlaw.com

Attorneys for the Official Committee of  
Unsecured Creditors

**CERTIFICATE OF SERVICE**

A true and correct copy of the foregoing Response was served on this 1<sup>st</sup> day of November, 2010 on the parties listed on the attached Service List in the manner so indicated.

/s/ Daniel A. DeMarco

*One of the Attorneys for the Official Committee of  
Unsecured Creditors*

## **SERVICE LIST**

The following is the list of **parties** who are currently on the list to receive e-mail notice/service for this case and who were served by the Court's electronic noticing system:

- Kathleen M. Bennett kbennett@bsk.com, khourihan@bsk.com; kdoner@bsk.com
- Lawrence C Bolla lbolla@quinnfirm.com, mboni@quinnfirm.com; dcorneilius@quinnfirm.com; mmiller@quinnfirm.com; npagliari@quinnfirm.com
- Carrie M Brosius cmbrosius@vorys.com, mborr@vorys.com
- Brian J. Butler bbutler@bsk.com, jheisler@bsk.com; kdoner@bsk.com
- Daniel A DeMarco dademarco@hahnlaw.com, hlpcr@hahnlaw.com
- Stephen A. Donato sdonato@bsk.com, kdoner@bsk.com; tayers@bsk.com; tvanetti@bsk.com
- Robert C Folland rob.folland@thompsonhine.com
- Joseph D. Frank jfrank@fgllp.com, ccarpenter@fgllp.com
- Joseph F. Gula jgula@kmgslaw.com, jgula@roadrunner.com; mwernicki@kmgslaw.com
- Mark L. Hankin mhankin@hankinmazel.com
- Kenneth C Johnson kjohnson@bricker.com, rdelsignore@bricker.com; jearley@bricker.com
- Philip E Langer planger@porterwright.com, cruehl@porterwright.com
- John P. Lennon jplennon@trialadvocates.com
- Ingrid S. Palermo ipalermo@bsk.com, kdoner@bsk.com; sheffner@bsk.com; tvanetti@bsk.com
- Drew T Parobek dtparobek@vorys.com
- United States Trustee (Registered address)@usdoj.gov
- Curtis L. Tuggle curtis.tuggle@thompsonhine.com
- Andrew L. Turscak andrew.turscak@thompsonhine.com
- Mark A. Weintraub Mark.Weintraub@ThompsonHine.com
- Linda E White linda.white@ag.ny.gov
- Christopher B. Wick cwick@hahnlaw.com, hlpcr@hahnlaw.com

- Joseph Zagraniczny jzagraniczny@bsk.com,  
kdoner@bsk.com;amasica@bsk.com;tvanetti@bsk.com

The following is the list of **parties** who are **not** on the list to receive e-mail notice/service for this case and who were served by United States Mail, postage prepaid:

Ciuni&Panichi Inc  
25201 Chagrin Blvd  
#200  
Beachwood, OH 44122

Guy C Fustine  
120 W 10th St  
Erie, PA 16501

RSM McGladrey, Inc.  
One S. Wacker Drive  
Suite 800  
Chicago, IL 60606